

CHAPTER 4

SUBCONTRACTING WITH SMALL BUSINESS, HUBZONE SMALL BUSINESS, SMALL DISADVANTAGED BUSINESS, VETERAN-OWNED SMALL BUSINESS and WOMEN-OWNED SMALL BUSINESS CONCERNS

BACKGROUND

The Small Business Act of 1958 provides that, in addition to ensuring that a fair proportion of Government prime contracts should be awarded to small business, the Small Business Administration (SBA) should take steps "**to encourage the letting of subcontracts by prime contractors to small business concerns.**"

In 1961, Congress required all contracts over certain dollar thresholds not awarded to small businesses to provide that contractors should develop and implement small business subcontracting programs. Dissatisfaction with agency implementation and enforcement of these programs led Congress, in 1978, to establish more stringent requirements for subcontracting in Section 8(d) of the Small Business Act, through enactment of PL 95-507.

This portion of PL 95-507, implemented in FAR Subpart 19.7, requires that:

- Every contractor, in contracts exceeding \$100,000, must agree to subcontract with small, small disadvantaged and women-owned small businesses to the maximum extent practicable consistent with the efficient performance of the contract. This does not apply to contracts which will be performed entirely outside any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, or which are for personal services.
- Each contractor other than a small business, on contracts that are expected to exceed \$500,000, or \$1,000,000 for construction, must have an approved subcontracting plan for the particular contract prior to award.
- Failure of any contractor or subcontractor to comply in good faith with the provisions listed above shall be a **material breach** of the contract or subcontract.
- Prior compliance with such subcontracting plans shall be considered in determining the **responsibility** of the offeror.

Continued Congressional dissatisfaction with subcontracting program progress led to the establishment, in PL 100-656, of **liquidated damages** requirements for contractors who fail to make a good faith effort to carry out the provisions of their subcontracting plans.

The Historically Underutilized Business Zone (HUBZone) Act of 1997 added subcontract plan requirements for HUBZone small business concerns.

Prime contractors must pay their small business and small disadvantaged business subcontractors on time, in a manner consistent with the Prompt Payment Act.

FAR Subpart 19.7 provides regulatory guidance on the proper administration of the Federal Small Business Subcontracting Program. This Chapter seeks to provide the acquisition community direction and clarification on how the program should be administered at HHS. Where there is a reiteration of FAR language, it is done so for emphasis and clarity.

A. HHS POLICY AND RESPONSIBILITY

It is the policy of the Department of Health and Human Services (DHHS) that small, HUBZone, disadvantaged businesses, veteran-owned, service-disabled veteran-owned and women-owned small businesses shall have the **maximum practicable opportunity** to compete for, and receive, subcontract awards.

This policy requires responsible action by:

- Contracting officers, to request and obtain plans for applicable contracts, to negotiate plans that demonstrate the prime contractor's best efforts to subcontract with small business (SB), HUBZONE small business (HUBZone), small disadvantaged business (SDB), veteran-owned small business (VOSB), service-disabled veteran-owned small business (SDVOSB) and women-owned small business (WOSB) to the maximum extent practicable, and to actively monitor the prime contractor's progress in carrying out its plan;
- Small Business Specialists, to assist the contracting officer in evaluating and negotiating acceptable plans, obtain necessary advice and assistance from the SBA and Defense Contract Management Command (DCMA) subcontracting specialists, coordinate approvals with the Director, OSDDBU (if applicable), and monitor contractors' performance through collection and analysis of required reports;
- Director, OSDDBU, to develop appropriate subcontracting program policy and ensure its consistent application throughout the DHHS; and
- Prime contractors, to develop and submit subcontracting plans, which contain aggressive goals, demonstrate their good faith efforts to award subcontracts

to SB, HUBZone, SDB, VOSB, SDVOSB, and WOSB concerns. Service-Disabled Veteran-Owned Small Business concerns (SDVOSB) meet the definition of veteran-owned small business concerns, and offerors may include them within the subcontracting plan goal for veteran-owned small business concerns. A separate goal for Service-Disabled Veteran-Owned Small Business concerns is not required. Prime contractors must submit accurate, timely and complete annual and bi-annual reports of their subcontracting activity.

B. TYPES OF SUBCONTRACTING PLANS

A subcontracting plan must be obtained from each apparent successful offeror or bidder selected for award prior to contract award, whether the contract is awarded by sealed bidding or negotiation when applicable.

1. Individual Plans

An individual subcontracting plan contains separate dollar and percentage subcontracting goals with all administrative elements developed for the specific contract. Each item of the plan must be negotiated and approved by the contracting officer prior to award. The plan applies to the contract for its entire life and is subject to modification (See FAR Part 19.704(a) Subcontracting Plan Requirements for further instruction on the development of Individual Plans.)

2. Master Plans with Individual Contract Goals

A master subcontracting plan contains the repetitive policy and administrative information required for subcontracting plans (see FAR 19.704(b)). Contractors may establish master plans on a plant or division-wide basis. The master plan shall be effective for the life of the contract after approval by the contracting officer; however, it is incumbent upon contractors to maintain and update master plans and is subject to modification.

The master plan does not include goals; therefore, when it is presented by a prime contractor, the contracting officer must negotiate separate dollar and percentage goals for SB, SDB and WOSB participation. A listing of the items and services to be subcontracted under the plan; and descriptions of the method used to develop the goals, to develop subcontracting source lists and to allocate overhead to the subcontracting plan must also be obtained. In accordance with FAR 52.219-9(f), the contracting officer may negotiate any deviations from the master plan that are necessary to tailor it for a specific contract.

When a master plan is accepted, the contracting officer must also obtain a copy of the lead agency contracting officer's approval of the master plan. (A lead agency is the first Federal agency to award a contract to a vendor in a given fiscal year.) After goals are negotiated and combined with the master plan to form a total plan, it becomes an "individual" subcontracting plan. Once incorporated into the individual contract, the plan is valid for the life of that contract.

3. Commercial Plans

Commercial plans may be submitted when a vendor sells products or services in regular production that is sold to the general public and/or industry for non-governmental purposes. This type of plan contains administrative elements and goals developed and approved on a company-wide basis. Individual contract goals are not required.

Commercial plans are negotiated and approved by the first Federal Government agency to award a contract to that vendor in a given fiscal year, and apply to all contracts awarded during that year **for the products and/or services covered by the plan**. A copy of the plan and the lead agency contracting officer's approval of the plan must be obtained. The plan must cover the products and services being purchased under the HHS contract. If it does not, an individual plan must be negotiated.

Commercial plans are valid only for the year in which they are approved. Therefore, a current plan must be obtained and approved prior to modifying or exercising options to contracts containing commercial plans.

C. SOLICITATION CLAUSES AND ATTACHMENTS

1. Subcontracting Plan Outline

*"Any contractor receiving a contract for more than the simplified acquisition threshold shall agree in the contract that small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns shall have the maximum practicable opportunity to participate in contract. Every HHS solicitation over the applicable subcontracting plan threshold that is not a small business or 8(a) set-aside **shall** include the "Small, HUBZONE Small, Small Disadvantaged Veteran-Owned and Women-Owned Business Subcontracting Plan Outline" found at Appendix 6-1. (See FAR Part 19.702.)*

2. Subcontracting Program Evaluation Criteria

For acquisitions where substantial subcontracting opportunities exist, the offeror's subcontracting plan should be one of the evaluation factors for award. When it has been determined that evaluation criteria for the subcontracting plan will be included, the plan evaluation shall be separate from the technical or cost evaluation, and could be worth up to ten percent of the total available points. The offeror's prior performance on its subcontracting plans shall be worth half of the total number of points available for

that factor. The following is suggested language for a solicitation:

- Subcontracting Program Performance. The offeror's proposed small business subcontracting plan will be evaluated to determine whether it represents the maximum practicable opportunity for subcontracting. The offeror's record of previous performance in carrying out the intent of the subcontracting program will be considered as approximately equal in value. Offerors are encouraged to submit aggressive subcontracting plans and documentation that demonstrates their prior corporate support for business suppliers. Small business offerors shall receive the maximum possible number of points for this factor.

The contracting officer shall consult with the OPDIV SBS, who shall coordinate with the Director, OSDDBU, prior to incorporating subcontracting plans as an evaluation factor for award.

OSDBU review of the subcontract plan is required prior to determining the competitive range. The time period for submission is established by the contracting officer, but must allow sufficient time for review, negotiation and approval by the Director, OSDDBU or designee prior to the anticipated contract award date. Ten working days is usually sufficient time to allow for review and approval of the subcontracting plan by the Director, OSDDBU. Negotiation of questioned items of the subcontracting plan may take longer.

D. PUBLICIZING SUBCONTRACTING OPPORTUNITIES

Contracting officers shall encourage large prime contractors and subcontractors to use the **FEDBIZ OPPS** to publicize subcontracting opportunities stemming from their Government business. Subcontract information should be submitted directly to the FedBizOpps under the heading "Subcontracting Assistance Wanted".

E. EVALUATING THE SUBCONTRACTING PLAN

The Plan Evaluation Team

a. Contract Specialist/Contracting Officer

The contract specialist/contracting officer must:

1. Review the plan to ensure that it is complete and contains all the information described in FAR 19.704;

2. Obtain advice and recommendations about the acceptability of the plan and proposed goals from the OPDIV SBS, the SBA PCR, the SBA or DCMA subcontracting specialists and the Director, OSDDBU or designee when determined appropriate;
3. Evaluate the potential for small business subcontracting based on all available information, including the apparent successful offeror's previous achievements. Previous involvement of small business concerns as prime or subcontractors in similar acquisitions should be considered (FAR 19.705-4(a)(1)). The contractor can be requested to provide such data regarding its small business subcontracting on similar acquisitions. If a follow-on acquisition is involved, good data can be expected to be available. Any previous data on similar prime contract awards should be considered;
4. Negotiate, in the case of negotiated procurements, subcontract goals, which represent good faith, comprehensive effort on the part of the apparent successful offeror;
5. Determine whether the plan provides the maximum practicable opportunity for small business concerns to participate in the performance of the contract;
6. Advise the contractor in writing why a subcontracting plan was determined unacceptable in the case of unacceptable plans for negotiated contracts. This should be done as quickly as possible so the contractor can modify the plan within the time limits prescribed. The contractor should be advised how it can make the plan acceptable, e.g., by the use of additional source systems or by establishing more aggressive goals;
7. Determine whether the apparent successful bidder has submitted a plan as specified in the clause at FAR 52.219-9, Alternate I, for sealed bid acquisitions. If the plan does not cover each of the required elements, advise the bidder of the deficiency and request submission of a revised plan by a specific date. If the plan is still incomplete on resubmission, the contractor should be found ineligible for award (FAR 19.705-4(b));
8. In sealed bid acquisitions, if a submitted plan is responsive (that is, complete) but shows the bidder's intention not to comply with its obligations under the "Best Efforts" clause at FAR 52.219-8 (that is, give its best efforts to award subcontracts to all categories of small business concerns to the fullest extent consistent with the efficient performance of the contract), then the bidder may be found ineligible for award (FAR 19.705-4(b)).

b. Operational Division Small Business Specialists (SBS)

The contracting activity SBS shall assist the contracting officer in his/her evaluation of the subcontracting plan (FAR 19-705-4(d)(7)). The SBS will have the benefit of seeing all the subcontracting plans received at the activity, where an individual contracting officer may only see a few.

If the SBS has delegated authority from the Director, OSDBU, then the SBS shall approve the subcontracting plan.

c. Small Business Administration (SBA)

The SBA's resident PCR must be provided an opportunity to review all proposed subcontracting plans submitted to OPDIVs located in the Washington, D.C. metropolitan area. The DIRECTOR, OSDBU, or designee may request the PCR's advice on plans received from locations outside his/her jurisdiction. Advice on the contractor's compliance with the subcontracting program should also be sought from the SBA Commercial Marketing Representative (CMR) located in the geographic area closest to the headquarters of the prime contractor. The CMR specializes in evaluating subcontracting plans and programs. A listing of the CMR offices is available from the SBS.

d. Director, Office of Small and Disadvantaged Business Development Utilization (OSDBU)

The Director, OSDBU or designee may review plans or conduct audits of DHHS contracts to ensure their conformance with HHS policy and ensure that the agency's subcontracting program policies are consistently applied. The Director, OSDBU, will have the benefit of seeing plans submitted by contractors to all HHS OPDIVs, and be aware of their previous compliance with individual plans and the subcontracting program in general.

e. Defense Contract Management Command

The Small Business Administration (SBA) and the Defense Contract Management Command (DCMA) share responsibility for subcontract compliance reviews through a memorandum of understanding MOU. This MOU delegates subcontract compliance reviews for all contractors who provide services to the Department of Defense to DCMA. The MOU also clarifies the elements of compliance that are considered

acceptable. SBA recognizes no other agency's system to ensure that prime contractors are complying with their subcontract plans. SBA reviews all other contractors. DCMA district or regional offices, or other contract administration office, shall be requested (FAR 19.706(a)) to comment on the contractor's past performance and compliance with subcontracting plans. Such past compliance is a factor in determining the contractor's responsibility (FAR 19-705-5(a)(1)). The DCMA Deputy for Small Business or

designated Administrative Contracting Officer will have the benefit of knowledge and experience of a contractor's performance on a wide range of subcontracting plans, and of the contractor's personnel, capabilities and procedures. In most cases, the contracting officer's experience with a particular contractor will be much narrower.

f. **Evaluation Factors**

The following questions should be answered to provide a basis for evaluating the subcontracting plan:

Are the elements listed in FAR 52.219-8 included in the plan? (This is the **absolute minimum**.)

- Are affirmative goals included? (Zero goals are not generally acceptable. Contracting officers who receive zero, as a goal shall obtain a documented explanation by contractors who state that they cannot locate small business subcontractors.)
- Has the prime contractor previously performed this service or produced the supplies? Have they complied with previous subcontracting plans?
- Have SB, HUBZone, SDB, VOSB, SDVOSB, and WOSB concerns previously performed this or similar acquisitions as a prime or subcontractor?
- What is the prime contractor's method of involving SB, HUBZone, SDB, VOSB, SDVOSB, and WOSB concerns as subcontractors? How does it plan to locate and solicit these firms?
- What types of records are maintained to demonstrate the contractor's intention to comply with the plan?
- Does the contractor have a "make-or-buy" program applicable to this acquisition?
- Do the plan and the contractor's in-house systems constitute a good faith effort to use HUBZone, SDB, VOSB, SDVOSB, and WOSB concerns as subcontractors?
- Do the proposed goals reflect the maximum practicable opportunity for SB, HUBZone, SDB, VOSB, SDVOSB, and WOSB concerns to participate as subcontractors?

g. **Plan Review Procedures**

2. Sealed Bids

The bidder selected for award shall submit a plan. The contracting officer or contract specialist reviews the plan and shall complete a "Subcontracting Plan Review Checklist," Appendix 6-2. The plan and review checklist are submitted to the OPDIV SBS for review. The SBS will provide recommendations on subcontracting opportunities offered under the contract and the acceptability of the subcontracting plan.

The plan is submitted to the SBA PCR for review and concurrence. The PCR may also make recommendations about the acceptability of the plan and its goals.

The contracting officer reviews the SBS and PCR recommendations. If the plan does not cover all of the required elements, the contracting officer must advise the contractor of the deficiency and request a revision or a new plan by a specific date.

After receiving the SBS and PCR's approval of the plan, **the contracting officer shall make it a material part of the contract.**

If a complete and responsive plan is not submitted within the established time period, the contracting officer must reject the bid as **non-responsive**.

If the plan, although responsive, shows the contractor's intent not to comply with the "Best Efforts" clause, the contracting officer may find the bidder **non-responsible**.

2. Negotiated Acquisitions

Plans shall be requested from all offerors or from all offerors in the competitive range. (See D.2 Subcontract Program Evaluation Criteria for additional instruction when evaluation points will be given to the plan.) The contracting officer or contract specialist reviews the plan(s) and completes a "Subcontracting Plan Review Checklist," Appendix 6-2. The plan, review checklist, and proposed contract are submitted to the OPDIV SBS for review. The SBS will provide recommendations on subcontracting opportunities offered under the contract and the acceptability of the subcontracting plan.

The plan is submitted to the SBA PCR for review and concurrence. The PCR may also make recommendations about the acceptability of the plan and its goals.

The contracting officer reviews the SBS and PCR recommendations. If the plan does not cover all of the required elements, the contracting officer must advise the contractor of the deficiency and request a revision or a new plan by a specific date.

Adequacy of the subcontracting plan is determined on the basis of negotiation of each of the required elements. An acceptable subcontracting plan must be negotiated prior to award.

For contractors who submit approved master plans, only the individual contract goals must be negotiated. Other elements of the master plan may be negotiated to conform to the requirements of the HHS contracting officer. If a commercial plan and associated approvals are submitted, no negotiation is required.

3. Other Considerations

a. Incentives

PL 95-507 encourages the use of various incentives to support subcontracting. Various approaches are acceptable, including a fully quantified schedule of payments or award fees. One of the simplest approaches is to include the subcontracting plan as an evaluation factor in the solicitation, and require a plan to be submitted by all offerors except small businesses. See Section D.2. above, "Subcontracting Program Evaluation Criteria," for suggested wording for this evaluation factor.

Other types of incentive provisions should be negotiated after agreement on the basic plan. Use of incentives must be governed by assurance that the established goals are realistic, and award fees must be commensurate with contractor effort beyond that which would have been expended under the basic plan.

b. Contractor Responsibility

Before determining the responsibility of an offeror on a contract requiring a subcontracting plan, the contracting officer shall review the offeror's compliance with previous subcontracting plans, if any, approved by that contracting office. The review must include the contractor's performance in submitting subcontracting reports in a timely manner. Failure to submit a plan that shows a good faith effort to use SB, HUBZone, SDB, VOSB, SDVOSB, and WOSB concerns must be a factor in determining responsibility.

Profit or Fee

The C.O. must consider the degree of a contractor's support for the subcontracting program must be considered as a factor in determining the amount of profit or fee (see FAR 15.404-4(d)(iii)). SBA, DCMA, and/or a previous administrative contracting officer should be consulted for advice on the contractor's subcontracting program. Some offices assign a standard point value to use as the "other factor" on the basis of their periodic evaluations of the contractor's efforts.

5. Awarding the Contract With a Subcontracting Plan

After approval the subcontracting plan must be made a material part of the contract. It may be incorporated in its entirety or by reference.

All HHS contracts, which include subcontracting plans, must also include submission of the SF 294 and/or SF 295 reports, whichever applies, as a not separately priced line item deliverable under the contract.

F. POST-AWARD ACTION

1. Synopsis of Award

The contracting officer should indicate in the award synopsis that a contract includes a subcontracting plan, and provide the address and telephone number of the subcontracting plan administrator. The contracting officer should also encourage prime contractors and subcontractors to publicize subcontracting opportunities in the **FEDBIZ OPPS**.

2. Subcontract Plan Administration

a. Contracting Officer Responsibilities

The contracting officer shall monitor receipt of SF-294 reports for individual contract plans for progress in meeting subcontracting plan goals by comparing the reports with the plan. Upon receipt of the SF-294, the contracting officer shall complete the "Subcontracting Performance Evaluation Report" attached as Appendix 6-5. A copy of the Subcontracting Performance Evaluation Report shall be furnished to the Small Business Specialist with a copy of the SF-294 report not more than 30 days after receipt of the bi-annual 294 report.

If percentage goals are not met, the contractor must be required to explain the shortfall in the "Remarks" block on the subcontracting reports and may be required to submit evidence of its outreach efforts to locate and provide subcontracting opportunities to SB, HUBZONE SB, SDB, VOSB and WOSB concerns. The requirement for compliance with plans may be fulfilled by evidence of satisfactory outreach efforts, as described in the plan, as well as by meeting goals. A copy of the 294, explanation and action taken by the contracting officer shall be sent to the SBS. Suggested letters to contractors whose 294 report is not satisfactory are located at Appendix ____ of this handbook.

After a contract or contract modification containing a subcontracting plan is awarded, the

Contracting officer who approved the plan is responsible for the following:

1. Notifying the SBA of the award by sending a copy of the award document to the Area Director, Office of Government Contracting, in the SBA area office where the contract will be performed.
2. Forwarding a copy of each commercial plan and any associated approvals to the Area Director, Office of Government Contracting, in the SBA area office where the contractor's headquarters is located
3. Giving to the assigned SBA resident procurement center representative (if any) a copy of the final negotiated subcontracting plan that was incorporated into a negotiated contract or contract modification.
4. Notifying the SBA resident procurement center representative of the opportunity to review subcontracting plans in connection with contract modifications.
5. Forwarding a copy of each plan, or a determination that there is no requirement for a subcontracting plan, to the cognizant contract administration office when applicable, i.e. when a Master Plan is used. (See Section C.2 Master Plans with Individual Contract Goals)
6. Initiating action to assess liquidated damages in accordance with FAR 9.705-7 upon a recommendation by the administrative contracting officer or receipt of other reliable evidence to indicate that such action is warranted.
7. Taking action to enforce the terms of the contract upon receipt of a notice under FAR 9.706(f).

b. SBA Responsibilities -

The Small Business Administration through its resident procurement center representative may:

1. Assist both Government agencies and contractors in carrying out their responsibilities with regard to subcontracting plans;
2. Review (within 5 working days) any solicitation that meets the dollar threshold in FAR 19.702(a)(1) or (2) before the solicitation is issued;

3. Review (within 5 working days) before execution any negotiated contractual document requiring a subcontracting plan, including the plan itself, and submit recommendations to the contracting officer, which shall be advisory in nature; and
4. Evaluate compliance with subcontracting plans, either on a contract-by-contract basis, or, in the case of contractors having multiple contracts, on an aggregate basis.

c. **Small Business Specialist Responsibilities –**

1. Assist the Contracting Officer in ensuring timely receipt of SF-294 reports.
2. Compile a bi-annual report for Director OSDBU of the subcontract activity of each Prime Contractor in their respective OPDIV.
3. Provide advice and assistance to the Contracting Officer in the monitoring of the Agency's Subcontract Program upon request.

d. **Director, OSDBU Responsibilities -**

Contractors shall submit SF-295 Reports to the Director, OSDBU on an annual basis. OSDBU will compile an annual report and submit the findings to the Small Business Administration as required in FAR 19.202-5 and Subpart 4.6.

OSDBU will receive bi-annual SF-294 reports from each OPDIV SBS on the subcontract activity in their respective divisions.

OSDBU will compare each OPDIV report to the SF-295 report. Any questions or discrepancies will be addressed to the contractor by the Director, OSDBU.

OSDBU will conduct periodic audits of Agency contracts to ensure compliance with policy and regulation.

OSDBU will issue policy and guidance on the execution of the subcontract program as needed for the Department.

OSDBU will function as the Agency's Ombudsman to address the public's inquiries on the Agency's subcontracting program.

3. Procedures for Delinquent Reports

Contractors who fail to submit SF 294 and SF 295 reports within 10 calendar days of the due date must be reminded in writing that the report is past due. Sample delinquency notices are attached at Appendix 4-7. Contractors who do not respond to the first notice must be issued a second written notice, which must contain the following information:

1. A statement that the named report has not been received;
2. A statement that failure to submit the report is a material breach of the contract;
3. A statement that if the report is not received within 10 calendar days from the date of the notice, the contracting officer will consider withholding payments as deemed appropriate under the circumstances until the report is received, and may terminate the contract for default;
4. A reminder that failure to submit the report may affect the contractor's ability to receive future awards from DHHS OPDIVs and that willful failure to perform or a history of failure to perform may result in debarment from future contracting with the Government; and
5. The address of the contracting officer or administrative contracting officer to whom the report must be sent.

Copies of delinquency notices concerning SF 294 reports shall be sent to the Small Business Specialist who must inform Director OSDDBU.

Contractors who do not respond to the 2nd notice may be subject to FAR Part 49.4 - termination for default proceedings.

4. Final Performance Assessments

Upon contract completion, the contracting officer shall submit a report documenting and evaluating the contractor's performance under the subcontracting plan to the OSDDBU Director and Small Business Specialist. The report shall be prepared on the "Final Subcontracting Performance Evaluation Report" attached as Appendix 4-8.

The report should include (1) the extent to which the goals were met, (2) whether the contractor's efforts were consistent with the effort proposed in the plan, and (3) whether the contractor required its subcontractors to adopt similar subcontract plans (FAR 19.706(d)). If the contractor did not comply in good faith with the subcontracting plan, the administrative contracting officer shall document the noncompliance in writing, include the reasons, and make appropriate recommendations that contracting officers may use for future contracts.

Before determining that a contractor's failure to achieve the subcontracting goals was occasioned by bad faith, the contracting officer must analyze the explanations required of the contractor and the criteria set forth in the subcontracting plan to establish what constitutes a "good faith effort."

In all cases of noncompliance, including instances where liquidated damages are assessed, the contracting officer shall notify the OPDIV Small Business Specialist.

e. Contracting Officer Duties

The contracting officer determines the fee payable if an incentive is applied. If the contractor fails to implement the plan, which is a material breach of the contract, the contracting officer may:

- Terminate the contract for default;
- Withhold payments;
- Negotiate a reduction in the contract price;
- Negotiate a revised plan to correct deficiencies; and
- Initiate action to assess liquidated damages against the contractor.
Liquidated damages will be equal to 100 percent of the amount by which the contractor failed to meet its goal, and are payable to the procuring agency.

The contracting officer should forward copies of SF all 294 reports received from contractor to the OPDIV Small Business Specialist.